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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BLAN, NICOLE R

ART UNIT	PAPER NUMBER
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1792

NOTIFICATION DATE	DELIVERY MODE
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03/24/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

DETAILED ACTION

1. The proposed After Final amendments will not be entered because it does not simplify the issue for appeal. The claims were rejected individually in the previous actions and by changing the dependency and incorporating limitations of the independent claims, they are under a different scope. Therefore, further search and/or consideration are needed.

Response to Arguments

2. Applicant's arguments filed February 29, 2008 have been fully considered but they are not persuasive.

3. In response to Applicant's argument with respect to claim 1, it is noted that the Applicant's rely heavily on intended use (i.e. the forming of the mist or steam). The recitation of the mist and water are intended use. The structure as relied upon in the art of record is fully capable of forming mist. However, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of Tanigawa is capable of forming mist, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by Tanigawa, and no such structural distinction is apparent.

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4. In response to Applicant's argument with respect to claim 8, the Examiner respectfully disagrees. The structure as relied upon in the art of record is fully capable of generating both mist and steam. It is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of Tanigawa is capable of forming mist and steam, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by Tanigawa, and no such structural distinction is apparent.

5. In response to the arguments with regards to claim 26, please refer to the rebuttals above.

6. With respect to claim 7, the Examiner respectfully disagrees. Claim 1 states the inlet of the conduit be connected to the device; therefore, it could be connected at the outlet. However, the mist generating device comprises reference numbers 57 and 59 together whereas the diffusion nozzle is reference number 59 alone. Thus, they are not considered to be the same.

7. In response to the reply to the Examiner's position regarding Official Notice, the Examiner would like to comment that Official Notice is based on the facts and from the facts a conclusion is determined. The Applicant's have admitted that centrifugal atomizers would be used to radially displace the water and that a mesh screen would prevent the water droplets from merging into larger globules and that a dual-shaft motor can be used to rotate two objects.

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Therefore, it was these facts that were then used to make the conclusion of obviousness as stated on pages 8 and 9 of the previous office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE BLAN whose telephone number is (571)270-1838. The examiner can normally be reached on Monday - Thursday 8-5 and alternating Fridays 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. B./

Examiner, Art Unit 1792

/Michael Cleveland/

Supervisory Patent Examiner, Art Unit 1792